

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

SPINA, ANTHONY

(b) County of Residence of First Listed Plaintiff PHILADELPHIA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Marc A. Weinberg, Esquire, Saffren & Weinberg, 815 Greenwood Ave., Ste. 22, Jenkintown, PA 19046 (215) 576-0100

DEFENDANTS

CITY OF PHILADELPHIA and OFFICER BRIAN W. HARTZELL

County of Residence of First Listed Defendant PHILADELPHIA

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY		<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other		<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	LABOR		<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 195 Contract Product Liability		SOCIAL SECURITY		<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	CIVIL RIGHTS	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395f)	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	PRISONER PETITIONS	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 411 Voting	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DJWC/DIWW (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	IMMIGRATION	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 530 General		
		<input type="checkbox"/> 535 Death Penalty		
		<input type="checkbox"/> 540 Mandamus & Other		
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		
		<input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN

(Place an "X" in One Box Only)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC SECTION 1983 AND 1988Brief description of cause:
false arrest and false imprisonment**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23**DEMAND \$**CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

01/25/2012

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANTHONY SPINA	:	
916 South 8 th Street	:	
Philadelphia, PA 19147	:	CIVIL ACTION NO.
Plaintiff,	:	
v.	:	JURY TRIAL DEMANDED
	:	
CITY OF PHILADELPHIA	:	
One Parkway	:	
1515 Arch Street	:	
Philadelphia, PA 19102-1595	:	
and	:	
OFFICER BRIAN W HARTZELL	:	CIVIL ACTION COMPLAINT
Philadelphia Police Department	:	
One Parkway	:	
1515 Arch Street	:	
Philadelphia, PA 19102-1595	:	
Defendants.	:	

JURISDICTION

This action is brought pursuant to 42 U.S.C. Section 1983. Jurisdiction is based upon 28 U.S.C. Section 1331 and 1343(1), (3), (4), and the aforementioned statutory provision. Plaintiffs further invoke the pendent and ancillary jurisdiction of this Court to hear and decide claims arising under state law.

VENUE

Venue is proper under 28 U.S.C. Section 1391(b) because the cause of action upon which the Complaint is based arose in Philadelphia, Pennsylvania which is in the Eastern District of Pennsylvania.

PARTIES

1. Plaintiff, Anthony Spina, is a citizen and resident of the City of Philadelphia,

Philadelphia County and the Commonwealth of Pennsylvania.

2. Defendant City of Philadelphia is a municipality in the City of Philadelphia, Philadelphia County existing under the laws of the Commonwealth of Pennsylvania.
3. At all times relevant herein the aforementioned Defendant employed the Police Officers of the City of Philadelphia Police Department who are being sued both individually and as officers, agents and/or employees of the City of Philadelphia.
4. At all times relevant hereto, Defendant, Brian W. Hartzell, was a Police Officer from the Philadelphia Police Department in the course and scope of his employment, under the color of law and pursuant to the customs, policies and practices of the Defendant, City of Philadelphia.
5. On January 26, 2010 Plaintiff, Anthony Spina, was stopped and administered a breathalyzer at or near 2nd and Christian Streets in Philadelphia, PA by Defendant, Brian W. Hartzell.
6. At the aforementioned time and place, Defendants, City of Philadelphia by and through its agents servants and workmen, and/or Hartzell, knew and/or should have known that the breathalyzer machine administered and/or used by the Plaintiff was defective and/or not properly calibrated.
7. Defendant, Hartzell, arrested Plaintiff based upon the defective and/or improperly calibrated breathalyzer machine.
8. Thereafter, Plaintiff was detained by the Defendant City of Philadelphia for two days.
9. Defendant, Hartzell, detained and arrested Plaintiff without justification and/or

probable cause.

10. Thereafter, on or about September 1, 2010, based upon the false pretext created by the Defendants, jointly, severally and/or individually Plaintiff was convicted of Driving Under the Influence and sentenced to Forty-Eight Hours to Six Months imprisonment.
11. Thereafter, Plaintiff served another two days in prison.
12. The detainment of Plaintiffs committed by Defendants as well as the actions leading up to the detainment was done with the intent and purpose of humiliating and embarrassing Plaintiffs in the presence of the public in general..
13. At the direction of Defendants, Hartzell, and other Police Officers from the City of Philadelphia, Plaintiff, Anthony Spina was unlawfully imprisoned and detained based upon false pretext created by the Defendants.
14. As a direct and proximate result of the aforementioned acts and omissions of the Defendants, Plaintiff, Anthony Spina suffered and continues to suffer from but not limited to the following:
 - A. Severe degradation, humiliation, embarrassment, emotional stress and anxiety;
 - B. Extreme fear, anxiety and paranoia especially upon seeing police officers and constables;
 - C. Damage to his reputation as a good, honest and law abiding citizen;
 - D. Having been and may continue to be prevented to attending to some or all of his usual daily activities to his great detriment and loss;
15. As a direct and proximate result of the aforementioned actions of Defendant,

Plaintiff, Anthony Spina, has suffered a severe loss of earnings and impairment of his earning capacity or power, which will continue for an indefinite period of time in the future to his great detriment and loss.

16. As a direct and proximate result of the aforementioned actions of the Defendants, Plaintiffs, Anthony Spina, have and will thereafter incur other financial expenses and losses.

COUNT I
42 U.S.C. SECTION 1983 AND 1988

17. Paragraphs 1 through 16 are incorporated herein by reference as though fully set forth herein at length.
18. As aforementioned, Defendants, Hartzell and City of Philadelphia, acted in the course and scope of their employment, under the color of state law, and pursuant to the customs, policies and practices of the Defendant City of Philadelphia intentionally and maliciously arrested and detained Plaintiff under false pretext, without probable cause, without due process of law and depriving him of the equal protection of the law and depriving him of the privileges and immunities afforded to citizens of the United States, all of which actions violated the Plaintiffs' rights under the Fourth, Fifth, Sixth and Fourteenth Amendments of the Constitution of the United States, laws of the United States and in violation of 42 U.S.C. Section 1983.
19. As aforementioned, Defendants, Hartzell and City of Philadelphia, acted in the course and scope of their employment, under the color of state law, and pursuant to the customs, policies and practices of the Defendant, City of Philadelphia when

they used their authority illegally and improperly to punish the Plaintiffs all of which violated the Plaintiffs' rights under the Fourth, Fifth, Sixth, Eight and Fourteenth Amendments of the Constitution of the United States, the laws of the United States and in violation of 42 U.S.C. Section 1983.

20. The above described actions of Defendants, Hartzell and City of Philadelphia, were so malicious intentional and/or grossly negligent, displayed such a reckless indifference to the Plaintiffs' rights and well being that the imposition of punitive damages is warranted against Defendants.

WHEREFORE, pursuant to 42 U.S.C. Section 1983 and Section 1988 Plaintiff, Anthony Spina demands compensatory and punitive damages against all named Defendants in an amount in excess of \$100,000.00.

COUNT II
FALSE ARREST AND FALSE IMPRISONMENT

21. Paragraphs 1 through 20 are incorporated herein by reference as if each were set forth herein at length.
22. Defendants, Hartzell and City of Philadelphia, intentionally caused the false arrest and imprisonment of the Plaintiffs under false pretext and without probable cause, without privilege and against the Plaintiffs' will.
23. As a direct and proximate result of the malicious and intentional acts of the Defendants' and their employees, Plaintiff suffered injuries which are described above.
24. The above described actions of Defendant, Hartzell and City of Philadelphia, were so malicious, intentional and reckless and displayed such a

reckless indifference to the Plaintiffs' rights and well-being that the imposition of punitive damages is warranted against Defendants.

WHEREFORE, Plaintiff, Anthony Spina, demands compensatory and punitive damages against the Defendants jointly and severally to the common law torts of false arrest and false imprisonment and in an amount in excess of \$100,000.00 plus costs, interest, attorney fees and delay damages.

COUNT IV
INFILCTION OF EMOTIONAL DISTRESS
42 U.S.C. SECTION 1983 AND 1988

25. Paragraphs 1 through 24 are incorporated herein by reference as if each were fully herein set forth at length.
26. Plaintiffs believe and therefore aver that Defendants did inflict serious emotional distress upon the Plaintiffs in a careless and reckless manner.
27. As a direct result of the actions of the Defendants, Plaintiff has been caused severe emotional damage and experienced great emotional trauma.
42. Due to the negligence and recklessness of Defendant City of Philadelphia individually and by and through the actions of the Defendant, Hartzell consisted inter alia of the following:
 - A. Failing to have an existence and/or maintain proper personnel training procedures necessary to prevent this type of conduct;
 - B. Failing to instruct and supervise their police officers in dealing with members of the public;
 - C. Failing to properly calibrate and maintain its breathalyzer machines;

and

D. Carelessly, recklessly and negligently employing, training, supervising and implementing personnel policies and procedures as discovery will disclose and Plaintiff hereby reserves the right to include other causes of action and negligence after discovery has been completed.

WHEREFORE, Plaintiff, Anthony Spina, demands judgment against Defendants, jointly, severally and/or individually in an amount in excess of \$100,000.00 plus costs, interest, attorney fees and delay damages.

BY:

MARC A. WEINBERG, ESQUIRE
Pa. Atty. I.D. No. 60643
Saffren & Weinberg
815 Greenwood Avenue, Suite 22
Jenkintown, PA 19046
(215) 576-0100

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 916 S. 8th Street, Philadelphia, PA 19147

Address of Defendant: One Parkway, 1515 Arch Street, Philadelphia, PA 19102

Place of Accident, Incident or Transaction: Philadelphia, PA
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes No

Does this case involve multidistrict litigation possibilities? Yes No

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes No

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes No

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes No

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes No

CIVIL: (Place ✓ in ONE CATEGORY ONLY)

A. *Federal Question Cases:*

1. Indemnity Contract, Marine Contract, and All Other Contracts
2. FELA
3. Jones Act-Personal Injury
4. Antitrust
5. Patent
6. Labor-Management Relations

7. Civil Rights

8. Habeas Corpus

9. Securities Act(s) Cases

10. Social Security Review Cases

11. All other Federal Question Cases

(Please specify)

B. *Diversity Jurisdiction Cases:*

1. Insurance Contract and Other Contracts
2. Airplane Personal Injury
3. Assault, Defamation
4. Marine Personal Injury
5. Motor Vehicle Personal Injury
6. Other Personal Injury (Please specify)

7. Products Liability

8. Products Liability — Asbestos

9. All other Diversity Cases

(Please specify)

ARBITRATION CERTIFICATION

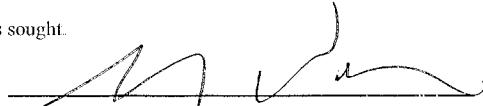
(Check Appropriate Category)

I, MARC A. WEINBERG, ESQUIRE, counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 1/25/12



60643

Attorney I.D. #

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 1/25/12



60643

Attorney I.D. #

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

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Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes No

Does this case involve multidistrict litigation possibilities?

Yes No

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Yes No

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes No

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes No

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes No

CIVIL: (Place ✓ in ONE CATEGORY ONLY)

A. *Federal Question Cases:*

1. Indemnity Contract, Marine Contract, and All Other Contracts
2. FELA
3. Jones Act-Personal Injury
4. Antitrust
5. Patent
6. Labor-Management Relations

7. Civil Rights

8. Habeas Corpus

9. Securities Act(s) Cases

10. Social Security Review Cases

11. All other Federal Question Cases

(Please specify)

B. *Diversity Jurisdiction Cases:*

1. Insurance Contract and Other Contracts
2. Airplane Personal Injury
3. Assault, Defamation
4. Marine Personal Injury
5. Motor Vehicle Personal Injury
6. Other Personal Injury (Please specify)
7. Products Liability
8. Products Liability — Asbestos
9. All other Diversity Cases

(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

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Attorney I.D.#

Attorney-at-Law

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 1/25/12

60643

Attorney I.D.#

Attorney-at-Law

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

ANTHONY SPINA	:	CIVIL ACTION
	:	
v.	:	
CITY OF PHILADELPHIA AND	:	
OFFICER BRIAN W HARTZELL	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (x)

<u>1/25/12</u>	<u>Marc A. Weinberg, Esquire</u>	<u>Plaintiff</u>
<u>Date</u>	<u>Attorney-at-law</u>	<u>Attorney for</u>
<u>215-576-0100</u>	<u>215-576-6288</u>	<u>mweinberg@saffwein.com</u>
<u>Telephone</u>	<u>FAX Number</u>	<u>E-Mail Address</u>